

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Embarq Communications, Inc.)	IC No. 06-S0253368
)	
Complaint Regarding)	
Unauthorized Change of)	
Subscriber's Telecommunications Carrier)	

ORDER ON RECONSIDERATION

Adopted: July 12, 2007

Released: July 13, 2007

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we grant a Petition for Reconsideration filed by Embarq Communications, Inc. (Embarq) asking us to reverse a finding that Embarq changed Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.¹ On reconsideration, we find that Embarq's actions did not violate the Commission's carrier change rules.² We therefore grant Embarq's *Petition* and deny the complaint.

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.³ The rules were also designed to take the profit out of slamming.⁴ The Commission applied the rules to all wireline carriers,⁵ and modified its existing requirements for the authorization and verification of preferred carrier changes.⁶

3. The rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.⁷ Specifically, a carrier must: (1) obtain the subscriber's written or

¹ See Petition for Reconsideration of Embarq Communications, Inc. (filed March 5, 2007) (*Petition*), seeking reconsideration of *Embarq Communications, Inc.*, 22 FCC Rcd 1196 (2007) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB).

² See 47 C.F.R. §§ 64.1100 – 64.1190.

³ See *id.*; see also 47 U.S.C. § 258(a).

⁴ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁵ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *id.*

⁶ See *id.* at 1549, para. 66.

⁷ See 47 C.F.R. § 64.1120; see also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁸

4. The Commission also adopted liability rules for carriers that engage in slamming.⁹ If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.¹⁰ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹¹

5. The Commission received a complaint on October 27, 2006, alleging that Complainant's telecommunications service provider had been changed from Time Warner Cable (Time Warner) to Embarq without Complainant's authorization.¹² Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹³ the Division notified Embarq of the complaint.¹⁴ In its response, Embarq stated that a new service order requested by Complainant was processed effective August 31, 2006, and that the order noted Complainant needed service as soon as possible.¹⁵ Embarq states that Complainant contacted it on September 18, 2006, and advised he did not authorize service with Embarq.¹⁶ The Division found that Embarq did not submit a third party verification (TPV) or letter of agency (LOA) as required by the Commission rules¹⁷ and, therefore, Embarq failed to show that Complainant authorized a change in his telecommunications service provider.¹⁸ Embarq seeks reconsideration of the *Division Order*.

II. DISCUSSION

6. Based on the record before us, we reverse the *Division Order* and grant the *Petition*. As

⁸ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

⁹ See 47 C.F.R. §§ 64.1140, 64.1160-70.

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

¹¹ See 47 C.F.R. §§ 64.1140, 64.1170.

¹² Informal Complaint No. IC 06-S0253368, filed October 27, 2006.

¹³ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁴ See Notice of Informal Complaint No. IC 06-S0253368 to Embarq from the Deputy Chief, Division, CGB, dated November 9, 2006.

¹⁵ Embarq's Response to Informal Complaint No. IC 06-S0253368, received December 21, 2006 (*Embarq Response*).

¹⁶ *Id.*

¹⁷ See 47 C.F.R. § 64.1120-64.1130.

¹⁸ See *Division Order*, 22 FCC Rcd 1196 (2007); see also 47 C.F.R. § 64.1150(d).

discussed below, we determine that there was no violation of the Commission's carrier change rules.

7. Complainant indicated he moved in July, 2006, and contacted Embarq to request a quote for phone service. Complainant states, however, that he did not authorize Embarq to actually establish service. Complainant stated he later established service with Time Warner. In the *Petition*, Embarq contends there was no unauthorized change because, as it noted in its response to the complaint, Embarq's records reflect that Complainant contacted Embarq on August 31, 2006, requesting *new* service.¹⁹ Embarq states that because a new service order was taken from Complainant, no services were changed or switched, and, thus, a TPV or LOA was not required under the Commission's rules.²⁰

8. In light of Embarq's assertions in the *Petition*, the Division notified Time Warner (Complainant's local exchange carrier) of the complaint and Embarq's response, and asked Time Warner for information regarding any switching activity on Complainant's account.²¹ Time Warner responded on April 10, 2007, stating that it installed service for Complainant on July 31, 2006, per Complainant's request. Time Warner further states that it continuously has provided service to Complainant since installation, has not received any request for release of Complainant's telephone number from Embarq or any other carrier, and has taken no action causing Embarq to issue bills to Complainant.²²

9. Based on the evidence provided by Time Warner that indicates no switch by Embarq after July 31, 2006, it appears Embarq did not at any time provide service to Complainant. Rather, Embarq telephone bills sent to Complainant appear to be billing mistakes rather than the result of an unauthorized switch.²³ Consequently, there was no violation by Embarq of the Commission's carrier change rules. Accordingly, we grant the *Petition*.

III. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the *Petition for Reconsideration* filed by Embarq on March 5, 2007, IS GRANTED and the complaint filed against Embarq on October 27, 2006, IS DENIED.

¹⁹ The Division interpreted Embarq's statement of "a new service order" to mean a new *service order* as opposed to a *new service* order. In the *Third Order on Reconsideration*, the Commission declined to apply the slamming rules to new installations. See *Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking*, 18 FCC Rcd 5099, 5135-38, paras. 96-101 (2003).

²⁰ See *Petition* at 1-2.

²¹ See Letter *re* Informal Complaint No. IC 06-S0253368 to Time Warner from the Deputy Chief, Division, CGB, dated March 13, 2007.

²² See Time Warner's Response to Informal Complaint No. IC 06-S0253368, received April 10, 2007.

²³ We note that Embarq has refunded payments which Complainant had made to Embarq. See *Embarq Response* at 1.

11. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau